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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 EDMUND C. BOTHER,

8 Plaintiff,

9 v.

10 UNITED STATES OF AMERICA, *et al.*,

11 Defendants.

Case No. 2:14-cv-00547-RFB-PAL

**ORDER**

Report & Recommendation (ECF No. 4)

Motion to Dismiss (ECF No. 12)

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13 Before the Court for consideration are the Report and Recommendation of the Honorable  
14 Peggy A. Leen, United States Magistrate Judge, entered September 5, 2014 and a Motion to  
15 Dismiss filed by Defendant United States of America. Order and Report of Findings and  
16 Recommendation (“Rep. & Rec.”), Sept. 5, 2014, ECF No. 4; Mot. Dismiss, ECF No. 12. Judge  
17 Leen screened Plaintiff Edmund Botha’s complaint and ordered that it be filed and that  
18 Plaintiff’s *in forma pauperis* application be granted. Rep. & Rec. at 5. Judge Leen also  
19 recommended dismissal of Plaintiff’s claims against the Department of Justice, the Federal  
20 Bureau of Prisons, and FCI Terminal Island, as well as dismissal of Plaintiff’s negligent hiring,  
21 retention and training claims, for lack of subject matter jurisdiction. *Id.* at 6. Defendant’s Motion  
22 to Dismiss seeks relief identical to that recommended by Judge Leen. Mot. Dismiss at 10.

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24 **I. REPORT AND RECOMMENDATION**

25 A district court “may accept, reject, or modify, in whole or in part, the findings or  
26 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). A party may file specific  
27 written objections to the findings and recommendations of a magistrate judge. 28 U.S.C. §  
28 636(b)(1); Local Rule IB 3-2(a). When written objections have been filed, the district court is

1 required to “make a *de novo* determination of those portions of the report or specified proposed  
2 findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); see also Local  
3 Rule IB 3-2(b). Where a party fails to object, however, a district court is not required to conduct  
4 “any review,” *de novo* or otherwise, of the report and recommendations of a magistrate judge.  
5 Thomas v. Arn, 474 U.S. 140, 149 (1985).

6 Plaintiff’s objections to the Report and Recommendation were due by September 22,  
7 2014. No objections were filed by that date. The Court has reviewed the record in this case and  
8 concurs with the Magistrate Judge’s recommendation that all of Plaintiff’s claims against the  
9 Department of Justice, the Federal Bureau of Prisons, and FCI Terminal Island be dismissed for  
10 lack of subject matter jurisdiction. The Court also concurs with the recommendation that  
11 Plaintiff’s negligent hiring, retention, and training claims be dismissed for lack of subject matter  
12 jurisdiction. The Court therefore adopts the Report and Recommendation in full and dismisses  
13 these claims with prejudice.

## 14 15 **II. MOTION TO DISMISS**

16 In its Motion to Dismiss, Defendant United States of America argues that Plaintiff’s  
17 negligent hiring, retention, and training claims are barred by the discretionary function exception  
18 to the Federal Tort Claims Act (“FTCA”) and that Plaintiff’s claims against the Department of  
19 Justice and Federal Bureau of Prisons at FCI Terminal Island<sup>1</sup> should be dismissed because only  
20 the United States is a proper party in a FTCA case. Mot. Dismiss at 1.

21 Defendant’s motion requests the exact relief recommended by Judge Leen. Therefore, the  
22 Court’s adoption of Judge Leen’s Report and Recommendation renders the Motion to Dismiss  
23 moot. Additionally, Plaintiff’s deadline to respond to the Motion to Dismiss was January 3,  
24 2015. Plaintiff has not filed any response to the motion, which would constitute consent to the  
25 granting of the motion under the Local Rules for this district. LR II 7-2(d).

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27 <sup>1</sup> While the Federal Bureau of Prisons and FCI Terminal Island are named as separate  
28 entities in the docket, it appears that the two are actually one entity, and are referred to as such  
both by Defendant in its Motion to Dismiss and by Plaintiff in his Complaint. Nevertheless, the  
Court dismisses the Federal Bureau of Prisons and FCI Terminal Island separately for the sake of  
clarity.

1           **III. CONCLUSION**

2           Accordingly,

3           **IT IS HEREBY ORDERED** that the Report and Recommendation (ECF No. 4) is  
4 **ACCEPTED** and **ADOPTED in full**.

5           **IT IS FURTHER ORDERED** that all claims against Defendants Department of Justice,  
6 Federal Bureau of Prisons, and FCI Terminal Island are **DISMISSED**.

7           **IT IS FURTHER ORDERED** that Plaintiff's negligent hiring, retention, and  
8 supervision claims are **DISMISSED with prejudice**.

9           **IT IS FURTHER ORDERED** that Defendant United States of America's Motion to  
10 Dismiss (ECF No. 12) is **DENIED as moot**.

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12           **DATED** this 29th day of January, 2015.

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15 **RICHARD F. BOULWARE, II**  
16 **UNITED STATES DISTRICT JUDGE**  
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